

**Conduct and Competence Committee**  
**Substantive Hearing**  
**20 Old Bailey, London, EC4M 7LN**  
**07 – 08 April 2014**

**Name of Registrant Nurse:** Miss Kate Marianne Cannon

**NMC PIN:** 95I4345E

**Part(s) of the register:** Nurse Independent/ Supplementary Prescriber (January 2012)  
Registered Midwife & Midwifery (June 1999)

**Area of Registered Address:** England

**Panel Members:** Ms Emma Boothroyd (Chair, lay member)  
Mr Mike Collins (Lay member)  
Ms Julie Tindale (Registrant member)

**Legal Assessor:** Mr Neil Mercer

**Panel Secretary:** Miss Natalie Carolan

**Nursing and Midwifery Council:** Represented by Ms Helen Fleck, Case Presenter,  
NMC Regulatory Legal Team

**Miss Cannon:** Not present nor represented in her absence.

**Facts proved:** All – by admission

**Facts not proved:** None

**Fitness to practise:** Currently Impaired

**Sanction:** **Striking off order**

**Interim Order Directed:** **Interim suspension order – 18 months**

**Decision on Service of Notice of Hearing:**

The panel was informed at the start of this hearing that Miss Cannon was not in attendance and was not represented.

The panel was satisfied that notice had been served as advised by the legal assessor, in compliance and accordance with Rules 11 and 34 of The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended February 2012) (“The Rules”).

**11.—** (2) *The notice of hearing shall be sent to the registrant—  
(b) in every case, no later than 28 days before the date fixed for the hearing.*

**34.—**(1) *Any notice of hearing required to be served upon the registrant shall be delivered by sending it by a postal service or other delivery service in which delivery or receipt is recorded to,  
(a) her address in the register*

Notice of this hearing was sent to Miss Cannon on 21 January 2014 by recorded delivery and first class post to her address on the register. The panel was satisfied that the rules of service had been complied with.

### **Proceeding in the absence**

The panel then considered continuing in the absence of Miss Cannon. The panel heard submissions from Ms Fleck on behalf of the Nursing and Midwifery Council (“NMC”) and took account of the legal assessor’s advice.

Ms Fleck referred the panel to Miss Cannon’s response to the notice of hearing, signed and dated by Miss Cannon on 04 February 2014. In that notice Miss Cannon indicated that she would not be attending this hearing today and stated that *“I have admitted all charges. I will not be returning to midwifery. I have no further evidence, other than my supporting statements which have been received.”*

Ms Fleck also referred the panel to an email received from Miss Cannon on 02 April 2014 which states *“I am unable to attend the hearing”*.

Ms Fleck submitted that an adjournment would not secure Miss Cannon’s attendance at a future date and therefore she would not be prejudiced if this hearing continued in her absence.

The panel was mindful that the decision to proceed in Miss Cannon’s absence was a discretion that must be handled with the utmost care and caution.

In deciding whether to proceed in Miss Cannon’s absence, the panel weighed its responsibilities for public protection and the expeditious disposal of this case with her right to a fair hearing. The

panel noted that three NMC witnesses had attended this hearing to give evidence and they would be inconvenienced by an adjournment.

Miss Cannon had been sent notice of today's hearing and the panel was therefore satisfied she had chosen voluntarily to absent herself. The panel had no reason to believe that an adjournment would result in Miss Cannon's attendance at a later date. The panel concluded that an expeditious disposal of this hearing was in both Miss Cannon's interests and the public interest. The panel therefore determined to proceed in her absence.

**Details of charge:**

That you, while employed as a trainee Advanced Midwifery Practitioner by the Wirral University Teaching Hospital Trust and studying on the Advanced Midwifery Practitioner Course at the University of Chester:

1. Falsely represented that the following written academic modules were all your own work when that was not the case:
  - a. Clinical decision making; and/or
  - b. Fetal blood sampling; and/or
  - c. Post anaesthetic recovery skills
2. Failed to notify the Trust that you were being investigated for academic malpractice by the University of Chester.
3. Your actions as set out at charge 1 and/or 2 were dishonest.

And in light of the above your fitness to practise is impaired by reason of your misconduct.

**Background to the NMC's case**

On 7 April 2008 Miss Cannon commenced employment at Arrowe Park Hospital part of the Wirral University NHS Foundation Trust ("the Trust") as a Trainee Advanced Midwifery Practitioner ("AMP"). As part of this training, Miss Cannon was required to attend the Advanced Midwifery Practitioner 5 year training course run by the University of Chester and successfully complete seven written academic modules of work.

On 31 March 2011 Miss Cannon met informally with Ms 1, then Midwifery In-patient Matron, and confirmed that she had not submitted any written assignments. It was agreed during this meeting that Miss Cannon would contact Ms 2, the Head of Midwifery and Reproductive

Health/Lead Midwife for Education at the University of Chester, to confirm that the required written assignments were complete and ready to be marked. On or around the 05 October 2011 Ms 2 asked Ms 1 if Miss Cannon had left the Trust's employment as the written assignments remained outstanding, as she had not had any contact with Miss Cannon for a considerable period of time.

On 7 October 2011 Miss Cannon again met with Ms 1. This meeting was to discuss Miss Cannon's failure to submit any of the AMP training modules to Ms 2.

On 13 October 2011 Ms 1 wrote to Miss Cannon stating that the written AMP modules were a requirement for Miss Cannon's continued employment within the Trust and gave a deadline for submission of all outstanding AMP training modules to be received by Ms 2 as no later than 5pm on 31 October 2011.

On 31 October 2011 Ms 2 collected the outstanding written modules of Vacuum Extraction, Post Anaesthetic Recovery Skills, Intrapartum Fetal Blood Sampling and Clinical Decision Making from Miss Cannon.

Whilst marking Miss Cannon's work, Ms 2 realised that 3 of the 4 pieces of work were very similar to pieces of academic work that had been previously submitted by other candidates who had completed the same AMP modules. Ms 2 obtained the work that she considered to be very similar to Miss Cannon's and noted that large parts of the previously submitted work had been used in Miss Cannon's modules of Post Anaesthetic Recovery Skills, Intrapartum Fetal Blood Sampling and Clinical Decision Making.

Ms 2 provided Miss Cannon's work to a University colleague who also identified that that the work appeared to be copied from previously submitted work. As a result of this Ms 2 reported the matter to the University Academic Quality Support Services and a University Academic Malpractice Hearing was arranged.

Ms 2 met with Miss Cannon on or around 8 December 2011 at Arrowse Park Hospital on a one to one basis and informed her that evidence of plagiarism had been found. Ms 2 asked Miss Cannon if there were any extenuating circumstances surrounding the completion of this work. Miss Cannon denied copying her colleagues' work and said there were no extenuating circumstances.

On 21 February 2012 the University of Chester held an academic malpractice hearing in relation to Miss Cannon's work and found that she had engaged in academic malpractice. Miss Cannon did not attend this hearing. Miss Cannon was informed in writing following the hearing that she was required to withdraw from the University and was not permitted to enrol for any other awards in a letter dated 01 March 2012. The University notified Dr 3, Head of Midwifery at the Trust, of the outcome of the malpractice hearing by letter dated 12 March 2012.

Dr 3 wrote to Miss Cannon informing her that the University had informed the Trust of the outcome of the academic malpractice hearing. Dr 3 scheduled a meeting with Miss Cannon to take place on 16 March 2012.

On 16 March 2012 a meeting took place between Dr 3 and Miss Cannon during which Miss Cannon continued to deny the allegations. Miss Cannon was informed that a full disciplinary investigation would have to be commenced as her actions could constitute gross misconduct on the grounds of unprofessional conduct, bringing the Trust into disrepute, dishonest behaviour and a failure to notify the Trust of the actions taken by the University. Additionally, in accordance with the Trust's Performance Capability Policy, Miss Cannon was informed that she was no longer able to perform her current trainee AMP role as she was not able to enrol at the University and therefore was unable to complete the required training for the role.

Ms 4, Principal Organisational Development Manager for Clinical Excellence at the Trust carried out the internal disciplinary investigation. During the course of her investigation Ms 4 interviewed Ms 5, then Delivery Suite Ward Sister and now acting In-patient Midwifery Manager, and Ms 1, then In-patient Midwifery Manager and now Service Development Matron, who both confirmed that they would have expected Miss Cannon to have informed them of any issues that she was experiencing with submitting the required course work but, Miss Cannon had, at no point, informed them of such difficulties. Ms 4 concluded that the allegations of gross misconduct and breaching the NMC code had been substantiated.

Ms 4 attempted to interview Miss Cannon but was unable to do so at that time.

A disciplinary hearing was held by the Trust on 25 July 2012. Dr 3 chaired the disciplinary hearing. The allegations against Miss Cannon were upheld based on the evidence provided by Ms 4 in her Investigation Report dated June 2012 and her verbal evidence during the disciplinary hearing. The decision was taken to terminate Miss Cannon's employment with immediate effect and to refer her to the NMC.

The University reconsidered Ms Cannon's case on 10 October 2012. The University panel considered the positive references and the medical evidence put forward by provided by Miss Cannon. However, the finding of academic malpractice was upheld.

### **Determination on findings of facts and reasons**

The panel had regard to Miss Cannon's response to the notice of hearing, signed and dated by her on 04 February 2014 in which Miss Cannon made admissions in respect of all of the charges against her.

**Charges 1(a), 1(b), 1(c), 2 and 3 were therefore announced proved by way of Miss Cannon's admission pursuant to Rule 24(5) of the The NMC (Fitness to Practise) Rules 2004.**

### **Determination on Misconduct and Impairment**

The panel had regard to Miss Cannon's response to the notice of hearing, signed and dated by her on 04 February 2014 and noted that Miss Cannon has admitted that her fitness to practise is impaired by reason of her misconduct.

Even though Miss Cannon does not dispute either misconduct or current impairment, the panel is required to determine in its own professional judgement whether on the basis of the facts found proved, Miss Cannon's fitness to practise is currently impaired. The panel noted that there is no standard or burden of proof.

The panel heard from 3 witnesses called on behalf of the NMC- Ms 1, Midwifery In-patient Matron at the Trust at the relevant time; Ms 2, the Head of Midwifery and Reproductive Health/Lead Midwife for Education at the University of Chester; and Dr 3, Head of Midwifery at the Trust.

The witness statements of Ms 4, Principal Organisational Development Manager for Clinical Excellence at the Trust and Ms 5, Delivery Suite Ward Sister at the Trust at the relevant time were also read into the record by Ms Fleck.

The panel heard submissions from Ms Fleck on behalf of the NMC.

Ms Fleck submitted that Miss Cannon should be held solely accountable for falsely representing that written academic modules in clinical decision making, fetal blood sampling and post anaesthetic recovery skills were her own work when that was not the case. Ms Fleck further submitted that it was Miss Cannon's responsibility as a registered practitioner, to ask for help and support if she felt it was required.

Ms Fleck referred the panel to the case of Roylance v GMC (no. 2) [2000] 1 AC 311 which defines misconduct as a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.

In her submissions Ms Fleck invited the panel to take the view that Miss Cannon's actions amounted to a breach of The code: Standards of conduct, performance and ethics for nurses and midwives 2008 ("the code").

She then moved on to the issue of impairment and referred the panel to the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin). She also referred the panel to the guidance in Dame Janet Smith's Fifth Shipman Report, as quoted in the case of *Grant*. That guidance urges panels considering impairment to ask themselves whether the registrant:

- a) *has in the past acted and/or is liable in the future to act so as to put a patient(s) at unwarranted risk of harm; and/or*
- b) *has in the past brought and / or is liable in the future to bring the profession into disrepute; and/or*
- c) *has in the past breached and / or is liable in the future to breach one of the fundamental tenets of the profession; and/or*
- d) *has in the past acted and / or is liable in the future to act dishonestly.*

The panel has accepted the advice of the legal assessor. The legal assessor referred the panel to the authorities of *Roylance and Grant*.

The panel adopted a two stage process in its consideration as advised. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Miss Cannon's fitness to practise is currently impaired as a result of her misconduct.

## **Decision on whether the facts found proved amount to misconduct:**

In reaching its decision, the panel had regard to the public interest which includes protection of the public, maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour.

The panel was of the view that Miss Cannon's dishonest actions fell significantly short of the standards expected of a registered midwife, and that her actions amounted to a number of breaches of the code, specifically the section of the preamble which reads-

*"The people in your care must be able to trust you with their health and wellbeing. To justify that trust you must-*

- be open and honest, act with integrity and uphold the reputation of the profession"*

The panel also considered Miss Cannon to be in breach of the following provisions-

*"22. You must work with colleagues to monitor the quality of your work and maintain the safety of those in your care.*

*26. You must consult and take advice from colleagues when appropriate.*

*41. You must take part in appropriate learning and practice activities that maintain and develop your competence and performance.*

*61. You must uphold the reputation of your profession at all times."*

The panel appreciated that breaches of the code do not automatically result in a finding of misconduct. However, the panel considered that the charges pertained to dishonest conduct which took place over a prolonged period of time. Miss Cannon falsely represented that the written academic modules she submitted in relation to clinical decision making, fetal blood sampling and post anaesthetic recovery skills were her own work, when that was not the case. Further, Miss Cannon did not notify the Trust that she was being investigated for academic malpractice by the University of Chester. In doing so, Miss Cannon failed to be open and honest, act with integrity and uphold the reputation of her profession. The panel had regard to the mitigation advanced by Miss Cannon in her written submissions in relation to her extenuating circumstances at the time of the incidents. The panel had regard to the evidence of the NMC witnesses, who informed the panel that they were not aware of these complaints at the time of the incident. The panel considered that Miss Cannon's actions were aggravated by the

fact that she was training to qualify as an Advanced Midwifery Practitioner, a senior role within the Trust.

The panel determined that Miss Cannon's dishonest actions fell short of the conduct and standards expected of a registered midwife and amounted to misconduct.

### **Decision on Impairment**

The panel next went on to decide if Miss Cannon's fitness to practise is currently impaired by reason of her misconduct.

Throughout its deliberations the panel has had regard to the guidance in Dame Janet Smith's Fifth Shipman Report, and quoted *Grant*. That guidance urges panels considering impairment to ask themselves whether the registrant:

- a) *has in the past acted and/or is liable in the future to act so as to put a patient(s) at unwarranted risk of harm; and/or*
- b) *has in the past brought and / or is liable in the future to bring the profession into disrepute; and/or*
- c) *has in the past breached and / or is liable in the future to breach one of the fundamental tenets of the profession; and/or*
- d) *has in the past acted and / or is liable in the future to act dishonestly.*

The panel considered all of the above questions and determined that limbs b, c and d were relevant in this case and were all answered in the affirmative.

The panel considered that Miss Cannon has shown limited insight into her misconduct. Miss Cannon repeatedly denied the charges against her throughout the Trust's internal investigations and before the Academic Malpractice Panel. The panel considered whether Miss Cannon's actions are remediable, whether they have been remedied and whether they are likely to be repeated. The panel considered that Miss Cannon provided limited evidence of remorse and did not fully appreciate the seriousness of her misconduct. The panel was not satisfied that Miss Cannon had remediated her misconduct and considered that there was a risk that she may act dishonestly in the future.

The panel had careful regard to the need to protect the public and the public interest. The panel concluded that due to the serious nature of the charges and Miss Cannon's lack of remediation, public confidence in the midwifery profession and the regulatory process would be undermined if the panel was not to make a finding of impairment in this case. The panel has therefore

concluded that it is necessary in the public interest to make a finding of impairment. Further, the need to uphold public confidence in the profession indicates that Miss Cannon's fitness to practise is currently impaired by reason of her misconduct.

**Decision on sanction and reasons:**

In reaching its decision on sanction, the panel considered all the evidence that had been placed before it together with the submissions made by Ms Fleck on behalf of the NMC.

Ms Fleck submitted that this case concerns persistent and long term dishonesty. She submitted that dishonesty is difficult to remediate and in any event, Miss Cannon has not remediated her dishonest misconduct. Ms Fleck also submitted that the charges fell towards the higher end of seriousness.

Ms Fleck invited the panel to make a finding that Miss Cannon's misconduct is indicative of an attitudinal problem.

Ms Fleck further submitted that Miss Cannon has demonstrated limited insight and remorse into her misconduct.

Ms Fleck referred the panel to the Indicative Sanctions Guidance ("ISG") and submitted that the matter of sanction was for the panel's professional judgement.

The panel took advice from the legal assessor. He advised the panel of the need to have regard to the public interest. He reminded the panel that its primary concern is the protection of patients and also the wider public interest in maintaining public confidence in the profession. The legal assessor advised that the purpose of a sanction is not to be punitive. He further advised of the need to have regard to the principle of proportionality.

The panel took account of the Council's Indicative Sanctions Guidance, but noted it is intended as guidance only.

As it had been advised, the panel considered the sanctions starting with the least restrictive. It had regard to the public interest. It applied the principles of proportionality whilst taking account of the aggravating and mitigating factors in the case. The panel bore in mind that the principal aims of sanctions are to protect the public, to uphold the standards and reputation of the midwifery profession and to maintain public confidence in the midwifery profession.

The panel considered Miss Cannon's personal extenuating circumstances at that time, but did not consider the mitigation advanced justified her dishonest actions.

The panel noted that references provided by Miss Cannon attested to her good character but also noted the references did not address Miss Cannon's academic misconduct.

An aggravating factor is that Miss Cannon's dishonesty is not made up of an isolated incident. Miss Cannon's dishonesty pertained to multiple incidents namely; falsely representing that written academic pieces in relation to clinical decision making, fetal blood sampling and post anaesthetic recovery skills were her own work when that was not the case; and failing to notify the Trust that she was being investigated for academic malpractice by the University of Chester. Miss Cannon continued to deny that she had done anything wrong and it was only after the Academic Malpractice Hearing and the Trust's internal investigations that Miss Cannon expressed any regret about her dishonest actions.

The panel first considered taking no further action. The panel considered that the charges are serious in nature pertaining to dishonesty. As such, to take no further action would be a wholly insufficient response. The panel determined that the imposition of a sanction is necessary.

The panel next considered imposing a caution order. A caution order is the least restrictive sanction that can be applied. It does not restrict the nurse's ability to practise but is recorded on the NMC Register and published on the NMC website for a period of between one and five years as the panel determines is appropriate.

The panel noted that a caution order may be appropriate where the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again. The panel did not consider that Miss Cannon's dishonest actions fell into this category. In light of the serious nature of the charges, it would not satisfy the public interest and therefore it would not be appropriate in this case, particularly in light of the dishonesty element.

The panel next went on to consider a conditions of practice order. The panel noted that the charges do not pertain to Miss Cannon's clinical practice. The panel determined that this is not an appropriate sanction in the circumstances of this case as a conditions of practice order cannot be formulated to address Miss Cannon's attitudinal problems. Nor is a conditions of practice order appropriate where, as here, it is difficult to see how conditions could address

Miss Cannon's dishonest acts or the risk of repetition and the harm that she has caused to the reputation of the profession.

The panel then considered imposing a suspension order. The panel carefully considered whether the charges against Miss Cannon require temporary removal from the register and whether a period of suspension would be sufficient to satisfy the public interest. The panel concluded that Miss Cannon has demonstrated very limited insight in respect of her dishonest conduct. The panel determined that Miss Cannon's dishonest conduct is not easily remediable, and even if it were remediable, her limited insight means that it has not been remedied. The panel considered that Miss Cannon presented a risk of repetition of similar behaviour and as such, a temporary period of suspension would not be sufficient response in these circumstances.

The panel is mindful that in terms of the indicative sanctions guidance, a striking off order may be the appropriate sanction where the Registrant's behaviour is fundamentally incompatible with being a registered midwife, where there has been a serious departure from relevant professional standards, serious dishonesty and where there has been a persistent lack of insight into the seriousness of actions. The panel is satisfied that these considerations are applicable in this case.

If Miss Cannon were to remain on the register it would seriously undermine the trust and confidence that patients have in the profession and the NMC as its regulator.

Accordingly, the panel has determined to impose a striking off order and to direct the Registrar to remove Miss Cannon's name from the register.

### **Interim Order**

At the conclusion of the sanction stage Ms Fleck submitted that it would be appropriate to impose an interim suspension order for a period of 18 months in order to cover any appeal period should there be one.

The panel accepted the advice from the Legal Assessor.

The panel considered whether an interim order should be made to cover any appeal period. The panel had regard to the findings it has already made in relation to impairment and sanction. In

the light of these findings the panel considered that an order was necessary on public interest grounds, in order to maintain public confidence in the profession and in the NMC as its regulator.

The panel considered imposing a conditions of practice order but for the reasons already set out in relation to sanction, the panel considered that an interim suspension order was necessary and proportionate. The panel considered that the duration of the interim order should be 18 months in order to allow time for any appeal to be made and to be heard.

The period of this order is 18 months but if, at the end of the appeal period of 28 days, should Miss Cannon have not lodged an appeal, the interim order will lapse and will be replaced by the final order. On the other hand if Miss Cannon does lodge an appeal, the interim order will continue to run.

Miss Cannon's record in the NMC register will show that she is subject to an interim suspension order and anyone who enquires about her registration will be told about the order.

This order will be confirmed to Miss Cannon in writing.

This concludes the determination.